89- 1509

Supreme Court, U.S.
FILED
1989
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JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT OF UNITED STATES
October Term 1989

RICHARD J. WAGNER, Petitioner
V.
U. S. BANKRUPTCY COURT, N.E.D., PA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RICHARD J. WAGNER, pro se
R. D. # 1, Box 1502
Pottsville,,Pa. 17901

DATE: November 1, 1989

25 pp

QUESTIONS PRESENTED

1. After the U. S. Bankruptcy Court entered its order which dismissed the proceeding therein, and petitioner had filed a timely "MOTION TO MODIFY ORDER", was petitioner precluded from filing an appeal from that order until disposition of his motion by the court?

SUGGESTED ANSWER: Yes.

2. Did the U. S. District Court wrongfully deny petitioner's "PETITION FOR WRIT OF MANDAMUS"?

SUGGESTED ANSWER: Yes.

3. Absent disposition of petitioner's "MOTION TO MODIFY ORDER", is the bankruptcy proceeding still pending below?

SUGGESTED ANSWER: Yes.

4. Was petitioner denied due process and equal protcetion secured by the Constitution, Amendments 5 and 14(1)?

SUGGESTED ANSWER: Yes.

LIST OF PARTIES

The parties to the proceedings below were the petitioner Richard J. Wagner (Wagner), pro se, and the respondent United States Bankruptcy Court, N.E.D., Pa, and defendant in adversary proceeding, the Pennsylvania National Bank and Trust Co. (Bank)

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IN THE SUPREME COURT OF UNITED STATES

October Term 1989

RICHARD J. WAGNER, Petitioner

V.

U. S. BANKRUPTCY COURT, N.E.D., PA.

PETITION FOR A WRIT OF CERTIORARI.
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Wagner respectfully prays that a writ of certiorari issue to review the order of the U. S. District Court, N.E.D., Pa., entered on 11-10-88, and affirmed by the U. S. Court of Appeals, 3C, on 5-12-89, and which denied Petition For Rehearing on 6-5-89.

OPINION BELOW

On 11-10-88 the U. S. District Court entered its "MEMORANDUM AND ORDER". R. 1a.

No opinion was rendered by the U. S. Court of Appeals, 3C.

JURISDICTION

The Judgment Order of the U. S. Court of Appeals was dated 5-12-89 (R. 8a) affirming the District Court order entered on 11-10-89. A timely PETITION FOR REHEARING was denied on 6-5-89. R. 9a.

On 9-9-89 Justice William J. Brennan, Jr., ordered that the time for filing this petition for writ of certiorari to be extended to and including 11-2-89.

This Court's jurisdiction is invoked under 28 U.S.C. section 1254(1).

STATUTE INVOLVED

U. S. Bankruptcy Rule 8002(b):

(b) Effect of Motion on Time for Appeal. If a timely motion is filed in the bankruptcy court by any party: (1) for judgment notwithstanding the verdict under Rule 9015; (2) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 9023 to alter or amend the judgment; or (4) under Rule 9023 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect; a new notice of appeal must be filed. No additional fees shall be required for such filing.

STATEMENT OF THE CASE

On 9-25-85, Wagner filed a voluntary petition in the U. S. Bankruptcy Court, N.E.D., Pa., to No. 4027T.

On 4-11-86, Wagner filed his Complaint in Adversary Proceeding to No. 86-0299, against the Bank.

On 6-4-86, Bankruptcy Judge Twardowski dismissed the voluntary petition No. 4027T.

On 6-9-86 Wagner filed his "REQUEST FOR ADMISSIONS" to No. 86-0299, directed to and served on the Bank.

At this point in time of the proceedings, Wagner had to elect whether to file a motion to modify the 6-4-86 Order under Bankruptcy Rule 7052(b) and 8002(b) or appeal.

Wagner elected to file such motion.

On 6-13-86, Wagner did file his timely "MOTION TO MODIFY ORDER", to No. 85-4027T.

The Bankruptcy Court failed to dispose of that motion. It is still pending, hanging in limbo, suspending the case in limbo to the grave prejudice of Wagner.

On 8-13-86, WAGNER'S MOTION FOR SUMMARY JUDGMENT" was filed to No. 86-0299, and served on the Bank, to which it did not respond.

Since the MOTION TO MODIFY ORDER was filed on 6-13-86, Wagner made many written requests to the Bankruptcy Court to act on that motion. Every one of those requests were ignored, in effect refused. This clearly represents an impermissible judicial usurpation of power, suspending the case in limbo.

In that motion Wagner specifically invoked Rule 7052(b) to amend or make additional findings of fact.

Mandamus has traditionally issued in response to abuse of judicial power. Thus

where Bankruptcy Judge Twardowski refused to act on the motion, mandamus was the only remedy. Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 384, 74 S. Ct. 145, 98 L.Ed. 106.

According to Rule 8002(b), an appeal would be without effect while the MOTION TO MODIFY ORDER remains unresolved, which more fully appears in Rule 8002(b) excerpted as follows:

(b) Effect of Motion on Time for Appeal. If a timely motion is filed in the bankruptcy court by any party: (1) for judgment notwithstanding the verdict under Rule 9015; (2) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 9023 to alter or amend the judgment; or (4) under Rule 9023 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect; a new notice of appeal must be filed. No additional fees shall be required for such filing.

Therefore, on 2-5-87, Wagner was compellled to,file his "PETITION FOR WRIT OF MANDAMUS" in the U. S. District Court for relief requesting it to Order the Bank-

ruptcy Court to resolve the motion.

Wagner had,

> "no other adequate means to obtain relief he desires".

Kerr v. U. S. District Court, 426 U.S. 394, 403 (1976), citing Roche v. Evaporated Milk Association, 319 U.S. 21, 26 (1943).

On 11-10-88 Judge Huyett of the U.S. District Court entered his "MEMORANDUM AND ORDER" (R. 1a) which dismissed the "PETITION FOR WRIT OF MANDAMUS", erroneously holding that,

> "If the bankruptcy judge erred in dismissing the petitioner's case, the petitioner's remedy was a direct appeal of the order of dismissal, not a petition for mandamus." R. 5a.

Furthermore, the Bank failed to respond to Wagner's "REQUEST FOR ADMISSIONS", which are therefore deemed admitted by operation of F.R.C.P. 36(a) from which the following applicable pertinent part is excerpted:

> "The matter is admitted unless, within 30 days after service of the request ,...the party to whom the request is

> directed serves upon the party requesting the admission a written answer or objection addressed to the matter, is signed by the party or by the party's attorney...."
> --F.R.C.P. 36(a)

In addition, "WAGNER'S MOTION FOR SUMMARY JUDGMENT" was served on the Bank and filed on 8-13-86. The Bank made no response to it. Thus, it is deemed uncontested.

> "In the absence of timely response, the motion may be treated as uncontested."
> --U.S. District Court, N.E.D., Pa., Rule 20(c).

The documented simple indisputable controlling facts set forth above with brevity and specificity, conclusively show that the central issues are:

a. The bankruptcy court wrongfully failed to enter summary judgment in favor of Wagner as requested in the Wherefore Clause in the Adversary Complaint against the Bank. Wagner was entitled to

judgment because the Bank had failed to respond to Wagner's "REQUEST FOR ADMISSIONS"; the Bank had failed to respond to "WAGNER'S MOTION FOR SUMMARY JUDGMENT"; and because the Bank had failed to respond to Wagner's "MOTION TO MODIFY ORDER".

b. The bankruptcy court did not grant, dismiss, or otherwise dispose of Wagner's "MOTION TO MODIFY ORDER". Any assertion to the contrary is patently false.

The foregoing facts are of great moment. They conclusively establish the break down of the court processes which give rise to the Constitutional,

a. Question of Wagner's right "to petition the Government for a redress of grievances", under the First Amendment; and to the,

b. Question of Wagner's right to "due process" and "equal protection of the laws", secured by Amendment 14(1).

REASONS FOR GRANTING THE WRIT

The processes of the courts have broken down.

It is the purpose of this Honorable Court to secure rights and uniformity of judgments.

In a sense, petitioner is litigating a class action, that he not only represents himself, but tremendously important principles upon which are based the plans, hopes and aspirations of a great many people throughout the country.

FIRST, the questions are substantial. SECOND, the questions were properly raised below. THIRD, the decisions below cannot be sustained on any independent ground of law.

Wagner submits, the decisions below are in flagrant conflict with fundamental laws and with decisions of this Court and are plainly wrong.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the U. S. District Court, N.E.D., Pa.; and the affirmance thereof by the U. S. Court of Appeals For The Third Circuit.

Respectfully submitted,

DATE: 11-1-89.

RICHARD J. WAGNER
R.D. #1, Box 1502
Pottsville, Pa. 17901

A P P E N D I X

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD J. WAGNER

v.

UNITED STATES BANKRUPTCY COURT

FILED NOV 10 1988

CIVIL ACTION
No. 87-0679

ENTERED: 11-10-88

CLERK OF COURT

MEMORANDUM AND ORDER

HUYETT, J. November 9, 1988

Richard Wagner filed this pro se petition for a writ of mandamus to compel the Bankruptcy Court to adjudicate his Chapter 13 bankruptcy petition.

Facts

Wagner filed his bankruptcy petition on September 25, 1985. However, Wagner did not file with his petition, or within fifteen days of the filing of his petition, the schedules and Chapter 13 statement required under Bankruptcy Rule 1007[1]. The docket sheet for Wagner's bankruptcy case reveals that in the following months, Wagner never

filed the required materials, although he did file several motions to clarify or vacate the court's orders. On April 11, 1986, he also filed adversary action against creditor Philadelphia National Bank (PNB). See Bankruptcy Case Record, appended as Exh. C to Motion to Dismiss. On June 4, 1986, the Honorable Thomas M. Twardowski held a hearing on PNB's motion for relief from the automatic stay, following which Judge Twardowski dismissed the action.

---

1. Bankruptcy Rule 1007(b) provides:

> The debtor in a chapter 13 individual's debt adjustment case shall file with the court a Chapter 13 Statement conforming to official Form No. 10 and, if the debtor is engaged in business, a statement of financial affairs prepared as prescribed by Official Form No. 8.

Bankruptcy Rule 1007(c) provides:

> The schedule and statements, if not filed in a pending case, shall be filed with the petition in a voluntary case, or if the petition is accompained by a list of all the debtor's creditor's and their addresses, within 15 days thereafter...

On June 13, 1986, Wagner filed in the bankruptcy court a "Motion to Modify 'Order'" and a "Statement of Assets & Liabilities as at (sic) 6-11-86." In this motion, Wagner sought thirty days to "perfect his pleadings." Citing Hanes v. Kerner, 404 U.S. 519 (1972), he asserted that Judge Twardwoski "failed to abide by the principle" that a pro se litigant "should be held 'to less stringent standards' than those of lawyers." Motion to Dismiss, Exh. A. Wagner did not appeal the dismissal of his bankruptcy petition.

Discussion

The remedy of mandamus is "a drastic one, to be invoked only in extraordinary situations" which amount "to a judicial usurpation of power." Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 34-35 (1980).

> In order to insure that the writ will issue only in extraordinary circumstances, this Court has required that the party seeking issuance have no

> other adequate means to attain the relief he desires, and that he satisfy the "burden of showing that (his) right is 'clear and indisputable.'"

Id. at 35 (citations omitted).

In this case, the dismissal of Wagner's bankruptcy petition does not represent a "judicial usurpation of power" warranting an order of mandamus compelling adjudication of the petition. Rather, the action of the bankruptcy court was simply the enforcement of a procedural rule governing the filing of schedules and statements. See In re Dandy Doughboy Donuts, 66B.R. 457 (S.D.Fla. 1986)(dismissing Chapter 11 petition because of debtor's failure to file list of creditors and claims).

However much I may sympathize with the plight of pro se bankruptcy petitioners, I cannot relieve them of their duty to comply with filing requirements that are applicable to all Chapter 13 petitioners, whether

pro se or represented. See Mozur v. Pennsylvania Department of Transportation, 507 F. Supp. 3, 4 (E.D.Pa. 1980) ("(A) judge may not become the surrogate attorney for a party, even one who is proceeding pro se. A pro se plaintiff must abide by the Federal Rules of Civil Procedure and when confronted by motions to dismiss must articulate reasons why the motions should not be granted.")

If the bankruptcy judge erred in dismissing the petitioner's case, the petitioner's remedy was a direct appeal of the order of dismissal, not a petition for mandamus[2]. The latter remedy is reserved for situations in which the petitioner has "no other means to attain the relief he desires." Kerr v. U.S. District Court, 426 U.S. 394, 403 (1976), citing Roche v. Evaporated Milk Association, 319 U.S. 21, 26 (1943).

Furthermore, as the dismissal of Wagner's bankruptcy petition renders moot his adversary complaint against PNB, I cannot compel the adjudication of the action.

Therefore, I will grant the respondent's motion to dismiss the petition for mandamus. An appropriate order is attached.

S/ Daniel H. Huyett, 3rd,
Judge.

---

2. The petitioner argues that he was not notified of the order dismissing his case. However, his "Motion to Modify 'Order'" refers expressly to the June 4, 1986 order

Bankruptcy Rule 8002(b) provides for a tolling of the ten day appeal period pending the resolution of motions under Rule 7052 "to amend or make additional findings of fact." However, although styled as a Rule 7052 motion, the petitioner's "Motion to Modify 'Order'" did not seek amended or additional findings.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD J. WAGNER

V.

UNITED STATES BANKRUPTCY COURT

CIVIL ACTION
No. 87-0679

ORDER

HUYETT, J. November 9, 1988

Upon consideration of the respondent's Motion to Dismiss the Petition for a Writ of Mandamus, the petitioner's response thereto, and the parties' memoranda, and for the reasons set out in the accompanying memorandum, it is ORDERED that the respondent's motion is GRANTED, and the Petition for a Writ of Mandamus is DISMISSED.

IT IS SO ORDERED.

S/ Daniel H. Huyett, 3rd, Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 89-1032

WAGNER, RICHARD J.,
Appellant

vs.

UNITED STATES BANKRUPTCY COURT, N.E., D. PA.

Appeal from the United States District Court, Eastern District of Pennsylvania
(D.C. Civil No. 87-0679)
District Judge: Daniel H. Huyett, 3rd

Submit
May 10, 1989
Before: Mansmann, Hutchinson, and Van Dusen, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court entered November 10, 1988, be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

S/ Carol Los Mansmann,
Circuit Judge

May 12, 1989

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 89-1032

WAGNER, RICHARD J., Appellant

vs.

UNITED STATES BANKRUPTCY COURT, N.E., D. PA.

SUR PETITION FOR REHEARING

Present: GIBBONS, Chief Judge, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRCA, COWEN, NYGAARD, and VAN DUSEN, Circuit Judges.

The petition for rehearing, filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied. S/ Carol Los Mansmann, Cir. Judge.

June 5, 1989.

89-1509

FILED
NOV 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. A-194

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

RICHARD J. WAGNER,
APPELLANT

vs.

UNITED STATES BANKRUPTCY COURT, N.E.D., PA.

APPEAL FROM THE ORDER ENTERED ON 11/10/88
IN THE U.S. DISTRICT COURT, N.E.D., PA.

BRIEF OF PENNSYLVANIA NATIONAL BANK AND TRUST COMPANY (INTERESTED PARTY AGAINST WHOM RELIEF IS SOUGHT) IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALEXANDER E. LIPKIN, ESQUIRE
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Attorney for Pennsylvania
National Bank and
Trust Company

DATE: November 14, 1989

BEST AVAILABLE COPY

QUESTIONS PRESENTED FOR REVIEW

Whether the United States District Court, Eastern District of Pennsylvania, judgment denying Appellant's Petition for Mandamus (as subsequently affirmed by the United States Court of Appeals, Third Circuit) was in error.

SUGGESTED ANSWER: No.

PARTIES

(a) Appellant is Richard J. Wagner.

(b) Appellee is United States Bankruptcy Court, Eastern District of Pennsylvania.

(c) Pennsylvania National Bank and Trust Company ("Bank") is an interested party in that the Petition for Mandamus sought relief against Pennsylvania National Bank and Trust Company, based upon an adversary Complaint filed in the aforesaid Bankruptcy Court.

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(11 USC 362) PAGE 7

GROUNDS FOR JURISDICTION

The jurisdiction of the District Court (Eastern District, Pennsylvania) was based on the fact that the original documents in this matter ("Petition for Writ of Mandamus") name as Defendant/Respondent the United States Bankruptcy, Eastern District, Pennsylvania, and said Petition arose out of the dismissal of Wagner's bankruptcy case (See 28 USC 1346 (a,2) and 28 USC 1334).

Appellate Jurisdiction to the United States Court of Appeals was based on the fact that Wagner appealed from a final Order of the United States District Court, Eastern District, Pennsylvania, and thus, Appellate Jurisdiction was vested per 28 USC 1291.

Appellate seeks to invoke the jurisdiction of this Honorable Court based upon said Court's authority to grant Certiorari, pursuant to Rule 19 of the Rules of said Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Appellant has not listed, in his Petition, any statement of Constitutional questions involved, and is therefore in violation of Rule 21 of this Honorable Court.

Bank believes there are no such issues involved, and accordingly, the Petition should be denied.

CONCISE STATEMENT OF CASE

The pending case is unfortunately marred by the deliberate efforts of Wagner to abuse the legal process as a pro se litigant, hence, a concise statement of the case is difficult.

The case began by Wagner filing for relief in the Bankruptcy Court of the Eastern District of Pennsylvania (#84-03151T) on September 25, 1988. One of the principal creditors of Wagner was Pennsylvania National Bank and Trust Company ("Bank"). Wagner failed to file the proper bankruptcy schedules within fifteen (15) days of the date of filing of his Petition. Instead, in the months after filing his Petition, he filed various Motions, including an adversary action against Bank. Bank filed a Petition to Terminate the Automatic Stay imposed by Section 362 of the Bankruptcy Code in order to proceed with

foreclosure of real estate owned by Wagner. At a hearing on this matter on June 4, 1986, Bankruptcy Judge Twardowski dismissed the bankruptcy action due to Wagner's failure to file the required schedules. Wagner did not appeal the decision of the Bankruptcy Court, but rather, on June 13, 1986, filed with the Bankruptcy Court a "Motion to Modify Order" which was moot since the case had been dismissed.

Wagner thereafter (on February 5, 1989) filed a Writ of Mandamus in the United States District Court - Eastern District, Pennsylvania, to compel the Bankruptcy Court to adjudicate his Petition and entertain his adversary complaint against Bank. This was dismissed by Order of Huyett, J., on November 9, 1988.

On December 12, 1988, counsel for the Bank received from Wagner a document entitled "Petition for Allowance of Appeal" to which

Bank filed an Answer of December 14, 1988. Thereafter, Bank's counsel was informed by Judge Huyett's law clerk that Wagner had never filed this Petition. Bank's counsel, therefore, supplied the court with a copy of Wagner's Petition, which resulted in Judge Huyett's order of December 29, 1988, which deemed Wagner's Notice to be timely filed.

The United States Court of Appeals, Third Circuit, affirmed the District Court's decision by Order dated November 10, 1988, and Wagner's Petition for rehearing before that Court was denied on June 5, 1989.

By Order of Justice Brennan dated September 9, 1989, Wagner was given until November 2, 1989 to file a Petition for Writ of Certiorari, which Petition was received by Bank's counsel on November 1, 1989.

BASIS OF FEDERAL JURISDICTION IN FIRST INSTANCE

The jurisdiction of the District Court (Eastern District, Pennsylvania) was based on the fact that the original documents in this matter ("Petition for Writ of Mandamus") name as Defendant/Respondent the United States Bankruptcy, Eastern District, Pennsylvania, and said Petition arose out of the dismissal of Wagner's bankruptcy case (See 28 USC 1346 (a,2) and 28 USC 1334).

CONCISE STATEMENT OF BANK'S ARGUMENT

It is respectfully submitted that, in order for the Court to arrive at a proper determination of this matter, one must largely ignore the convoluted group of pleadings filed by Wagner and focus on the central issue.

Wagner was a bankrupt. While in bankruptcy, he filed an adversary proceeding against Bank, which was attempting for foreclosure on his property. Bank filed a Petition to Terminate the Automatic Stay and/or dismiss the bankruptcy. At the hearing on this matter (on June 4, 1986), at which Wagner was present, Bankruptcy Judge Twardowski dismissed the Bankruptcy Petition due to Wagner's failure to comply with the mandatory filing deadline for the various bankruptcy schedules. Wagner chose not to appeal therefrom, but filed a subsequent

motion in Bankruptcy Court which was denied. This motion was filed on June 13, 1986 and was moot due to the aforesaid dismissal.

On February 5, 1987, Wagner filed a Petition in the Eastern District Court for Mandamus directed toward the Bankruptcy Court, presumably to have that court adjudicate the June 13, 1986 Motion. Although Bank had not been named as a party in the actual Mandamus Petition, Bank has filed responsive pleadings due to the fact that the initial motion sought relief against Bank, presumably based on the same theory as the adversary action.

Judge Huyett of the United States District Court, Eastern District, correctly pointed out in his opinion that Mandamus is a drastic remedy to be invoked only in extraordinary situations which amount to a judicial usurpation of the power, therein citing Allied Chemical Corp. vs. Daiflon, Inc. 449 US 33, 34-45 (1980).

As Judge Huyett pointed out, to the extent that Wagner disagreed with the Bankruptcy Court's findings, his remedy was an appeal from the Bankruptcy Court's Order of Dismissal, not a Petition for Writ of Mandamus, since Mandamus cannot be used where there are other means to attain the relief desired, Kerr vs. U.S. District Court, 426 U.S. 394, 403 (1976) and Roche vs. Evaporated Milk Association, 319 U.S. 21, 26 (1943).

Judge Huyett's decision was affirmed by the United States Court of Appeals, Third Circuit, without opinion on May 12, 1989, and that Court denied rehearing by Order June 5, 1989.

In his Petition for Certiorari, Wagner makes the broad claim that the legal process has broken down, that the present case presents questions of immediate importance which are substantial, were properly raised

below, and that the lower court decisions cannot be sustained on independent grounds of law (see Page 4 of Petition for Writ of Certiorari).

Bank believes that Wagner had available to him the right to appeal the Bankruptcy Court Order of June 4, 1986, which dismissed his case. Any subsequent filings with the Bankruptcy Court are moot due to this dismissal. Judge Huyett, in his well reasoned opinion, correctly states that the pro se status of litigants does not relieve them of their duty to comply with filing requirements and deadlines (citing Mozur v. Pa. Dept. of Transportation 507 F. Supp. 3, E.D. Pa. 1980). That Wagner himself is the person abusing the legal process is suggested by footnote 2 of Judge Huyett's decision where it is pointed out that, although Wagner argued he was never notified of the June 4, 1986 Bankruptcy Court

Order of Dismissal, his June 13, 1986 motion and suggested Order refers to that very decision.

Accordingly, Bank sees no basis for this Honorable Court to grant Certiorari and requests the Petition be denied.

NO. A-194

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1989

RICHARD J. WAGNER,
Appellant

vs.

UNITED STATES BANKRUPTCY COURT, N.E.D., PA.

CERTIFICATE OF SERVICE

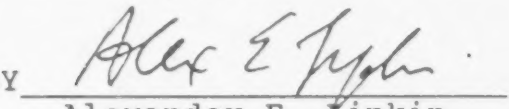
The undersigned, counsel for Pennsylvania National Bank and Trust Company, hereby certifies that a true and correct copy of the within Brief was this day served upon the following by certified mail, return receipt requested:

Richard Wagner
Trustee for the Basic Bible Church
of America
Church #8255 and the Order of the
Almighty God
R. D. #1, Box 1502
Pottsville, Pennsylvania 17901

and

Virginia R. Powel, Esq.
Asst. U.S. Attorney
U.S. Attorney's Office
3310 U.S. Court House
601 Market Street
Philadelphia, Pennsylvania 19106

LIPKIN, MARSHALL, BOHORAD
& ADAMS, P.C.

BY 
Alexander E. Lipkin

Attorney for
Pennsylvania National
Bank and Trust Company